

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of NextEra)
Energy Transmission Southwest, LLC for its)
Certificate of Convenience and Necessity to) Docket No. 22-NETE-419-COC
Construct Transmission Facilities in the State)
of Kansas.)

POST HEARING BRIEF OF DARREN McGHEE
AND ROCHELLE McGHEE SMART

COMES NOW, Darren McGhee and Rochelle McGhee Smart (collectively "McGhees"),
and respectfully file this Post Hearing Brief with the State Corporation Commission of the state
of Kansas ("Commission").

Procedural History

1. On February 28, 2022, NextEra Energy Transmission Southwest, LLC ("NEET Southwest") applied to the Commission for a certificate to construct an electric transmission line and transact business as a public utility in Kansas.
2. On May 6, 2022, Darren McGhee and Rochelle McGhee Smart filed a petition to intervene in opposition to NEET Southwest's application.
3. On May 31, 2022, the Commission issued an order granting the McGhees petition to intervene.
4. On June 8 and 9, 2022, the Commission held a hearing on NEET Southwest's application.

Statement of material facts

5. NEET Southwest seeks to construct 94 miles of electric transmission line for the bulk transfer of 345 kilovolts of electricity from Wolf Creek Station in Coffey County, Kansas, to Blackberry Substation in Jasper County, Missouri (the “WC/BB Electric Transmission Line”). Direct Testimony of Becky Walding at p. 4:14-24 (Feb. 28, 2022).
6. The WC/BB Electric Transmission Line, if implemented, would traverse approximately 85 miles of Coffey County, Anderson County, Allen County, Bourbon County, and Crawford County in Kansas. Direct Testimony of Becky Walding at p. 4:21-24 (Feb. 28, 2022).
7. NEET Southwest has not obtained a certificate from the Commission permitting NEET Southwest to transact business in this State. See generally, Direct Testimony of Becky Walding, (Feb. 28, 2022).
8. NEET Southwest has not obtained a certificate from the Commission finding that public convenience and necessity will be promoted by constructing the WC/BB Electric Transmission Line. See generally, Direct Testimony of Becky Walding (Feb. 28, 2022).
9. NEET Southwest is transacting business in Kansas. Tran. 431:24-432:5 (“NEET Southwest stipulates that it has executed nine option agreements in Kansas, substantially in the form of the option agreement and transmission easement which has been identified as McGhee Exhibit 1 and admitted into the record of this case. All of the executed option agreements include payment to the landowners.”); McGhee Exhibit 1 (NEET Southwest Option Agreement and Transmission Easement); Trans. 134:12-13 (Walding indicating NEET Southwest has engaged with all property owners); Trans. 138:10-14 (Walding

stating it is NEET Southwest's normal course of business to send option agreements to landowners to obtain property rights); McGhee Exhibit 2 (Survey Permission Form seeking access to conduct surveys and collect samples); Trans. 138:10-14 (Walding indicating it is NEET Southwest's normal course of business to send survey permission forms to landowners).

10. NEET Southwest has entered into numerous option agreement and transmission easement agreements in which NEET Southwest received property rights in exchange for money. Tran. 431:24-432:5 ("NEET Southwest stipulates that it has executed nine option agreements in Kansas, substantially in the form of the option agreement and transmission easement which has been identified as McGhee Exhibit 1 and admitted into the record of this case. All of the executed option agreements include payment to the landowners."); Trans. 138:10-14 (Walding indicating it is NEET Southwest's normal course of business to send option agreements to landowners in an attempt to obtain property rights).
11. NEET Southwest has not acquired a "siting permit" from the Commission.
12. NEET Southwest has begun site preparation for the WC/BB Electric Transmission Line construction. McGhee Exhibit 2, Survey Permission Form (NEET Southwest seeking permission to enter property to conduct an investigation for the construction of an electric transmission line); Trans 450:19-24 (Smart indicating that NEET Southwest badgers landowners to sign access agreements). Trans 457:15-19 (Smart indicating that NEET Southwest entered her property to survey and collect soil samples without permission).
13. NEET Southwest has threatened landowners with taking their property by eminent domain. Trans 144:9-12; (Walding testimony that Tracy Davis is NEET Southwest's

internal legal counsel); Trans. 148:22-150:6 (recording of Tracy Davis addressing a public meeting indicating that NEET Southwest would use the eminent domain process if a landowner does not agree to allow the WC/BB electric transmission line to cross their land); Trans. 151:10-13 (Walding acknowledging the recording was of Tracy Davis); Trans 449:24-450:18 (Smart testifying that NEET Southwest threatened to take her property by eminent domain).

14. Neither NEET Southwest nor any intervenor submitted any in data quantifying Kansas specific benefits. Reply Testimony of Jeff D. Makholm, Ph.D., at 8 (May 27, 2022) (indicating that the only quantified benefits that have been submitted are to the SPP region as a whole).

Argument.

15. Through its case law, the Commission has developed a list of certain competencies that an applicant must show to obtain a certificate to transact business in the state – e.g. managerial, financial and technical experience necessary to construct, operate and maintain an electrical transmission line. See, Order Approving Stipulation & Agreement and Granting Certificate, Docket No. 11-GBEE-624-COC, ¶ 63 (Dec. 7, 2011). That showing is in addition to the statutory requirements under K.S.A. 66-131(a) governing when the Commission may issue a certificate to conduct business. NEET Southwest fails to make the requisite showing of managerial competence when it systematically and purposefully engages in prohibited activities.
16. K.S.A. § 66-131(a) prohibits any entity seeking to construct an electric transmission line from transacting business in this state until the Commission issues a certificate to that

entity allowing it to transact business. NEET Southwest seeks to construct an electric transmission line in Kansas. *Infra* at ¶¶ 5 and 6. The Commission has not issued a certificate to NEET Southwest allowing it to transact business. *Infra* at ¶ 7. Nonetheless, NEET Southwest has transacted business in this state. *Infra* at ¶ 9.

17. "Business is transacted in Kansas when an individual is within or enters this state in person or by an agent and, through dealing with another within the state, effectuates or attempts to effectuate a purpose to improve his economic conditions and satisfy his desires." *Volt Delta Resources, Inc. v. Devine*, 241 Kan. 775, 778, 740 P.2d 1089 (1987). In an attempt to "improve its economic conditions and satisfy its desires," NEET Southwest presented option agreements for easements to landowners to obtain property rights. *Infra* at ¶ 9; *Trans.* 138:10-14. Further, it succeeded in that purpose when it entered into numerous option agreements with landowners in exchange for money. *Id.*; *Tran.* 431:24-432:5. Consequently, there can be no dispute that NEET Southwest has transacted business in this state and has ignored K.S.A. § 66-131(a)'s plain language prohibiting it from transacting business.

18. Similarly, K.S.A. § 66-134 prohibits any entity seeking to construct an electric transmission line from issuing any notes or receiving any property until the Commission issues a certificate to that entity allowing it to transact business. Notwithstanding NEET Southwest's failure to receive a certificate allowing it to transact business, it has acknowledged entering into numerous option agreements and transmission easements for property rights in exchange for money. *Infra* at ¶ 9; *Tran.* 431:24-432:5; *Trans.* 138:10-14. Again, there can be no dispute that NEET Southwest has ignored K.S.A. §§ 66-134 plain

language prohibiting it from receiving the property rights it received under the option agreement and transmission easement.

19. Further, K.S.A. 66-1,178(a) prohibits any entity seeking to construct an electric transmission line from beginning site preparation for an electric transmission line without first acquiring a siting permit from the Commission. NEET Southwest has started site preparation by accessing landowner property to survey, conduct studies, and collect soil samples. *Infra* at ¶ 12. To add insult to the injury caused by its failure to comply with the statute prohibiting site preparation, NEET Southwest has accessed landowner property without the landowner's permission. *Id.*; Trans 457:15-19.
20. Likewise, K.S.A. 66-1,178(a) also prohibits any entity seeking to construct an electric transmission line from attempting to exercise eminent domain to acquire any interest in land without first receiving a siting permit from the Commission. See also, *McGinnis v. Kan. City Power & Light Co.*, 231 Kan. 672, 647 P.2d 1313 (1982). NEET Southwest has threatened landowners with taking their property by eminent domain if those landowners do not sign the easement agreements. *Infra* at ¶ 13. Notwithstanding any ambiguity as to when NEET Southwest would act on those threats, they are still threats and an attempt to acquire an interest in land under the color of eminent domain in violation of K.S.A. 66-1,178(a). Magnifying NEET Southwest's recalcitrance and failure to comply with statutory mandates is the realization that NEET Southwest is praying on farmers and other landowners who likely have limited information on whether NEET Southwest has the legal power to act on its nefarious threats.

21. As the Kansas Supreme Court has stated, "[t]he statutory requirement that a public utility procure a proper certificate from the commission was enacted for the protection and welfare of the people. The whole scheme of our law relating to public utilities was for that purpose." *Wycoff v. Quick Way Homes, Inc.*, 201 Kan. 442, 446, 441 P.2d 886, 890 (1968).
22. The structure of that statutory scheme provides both substantive and procedural safeguards to assure ill-conceived projects do not move forward based simply on momentum. NEET Southwest's habitual disregard for Kansas law and the protections it affords our people demonstrates that NEET Southwest does not have the managerial capabilities necessary to conduct itself as a responsible corporate citizen that respects our state's laws and the protections they afford.
23. In addition to the Commission's case-law-developed managerial competency requirements, the legislature has also set out statutory requirements that must be shown before the Commission issues a certificate. Pursuant to K.S.A. 66-131(a), there must be a showing that the electric transmission line will promote public convenience and necessity before the Commission issues a certificate. That showing must be met with substantial competent evidence. *Kansas Electric Power Coop., Inc. v. Kansas Corp. Comm'n*, 235 Kan. 661, 683 P.2d 1235 (1984).
24. Necessity "means a public need without which the public is inconvenienced to the extent of being handicapped." *Central Kansas Power Co. v. State Corp. Comm'n*, 206 Kan. 670, 675, 482 P.2d 1 (Kan. 1971). When determining the necessity for an electric transmission

line, the Commission must consider the line's benefit to Kansas consumers and the economic development benefits the line provides to Kansas. K.S.A. 66-1,180.

25. However, no data has been submitted quantifying Kansas-specific benefits in this case.

Infra at ¶ 14. Consequently, there has been no competent or substantive analysis of the WC/BB Electric Transmission Line's benefits to Kansas consumers or its impact on Kansas's economic development. Without competent and substantive analysis of Kansas-specific benefits, the Commission is hamstrung. It lacks the information necessary to find the WC/BB Electric Transmission Line promotes public convenience and necessity.

Therefore, the statutory requirements of K.S.A. 66-131(a) for the Commission to issue a certificate have not been met, and the Commission should deny NEET Southwest's application.

WHEREFORE, for the foregoing reasons and the reasons set forth in the post hearing brief of Kansas Industrial Consumers Group which is incorporated here by reference, the McGhees respectfully request that the Commission deny NEET Southwest's application for a certificate to construct an electric transmission line and transact business as a public utility in Kansas, and for all other relief that is just and proper.

Respectfully Submitted,
Kimmell Law Firm, LLC
By: /s/ Rustin J. Kimmell
Kimmell Law Firm, LLC
512 Neosho St
P.O Box 209
Burlington, KS 66839
KS Bar No. 23369
(816) 399 – 5328
rustin@kimmell-law.com

Certificate of Service

I, certify that a true and correct copy of the foregoing POST HEARING BRIEF OF DARREN McGHEE AND ROCHELLE McGHEE SMART has been served by electronic service on this 30th day of June, 2022, to all parties on the following service list. This constitutes service and hard copies will not follow.

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
D.NICKEL@CURB.KANSAS.GOV

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

DEREK BROWN, Sr. Federal Reg. Affairs, Manager
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889

TOPEKA, KS 66601-0889
Derek.Brown@evergy.com

CATHRYN J. DINGES, SR DIRECTOR & REGULATORY AFFAIRS COUNSEL
EVERGY KANSAS CENTRAL, INC
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Cathy.Dinges@evergy.com

DENISE M. BUFFINGTON, DIR. FED REG. AFFAIRS
EVERGY METRO, INC D/B/A EVERGY KANSAS METRO
One Kansas City Place
1200 Main St., 19th Floor
Kansas City, MO 64105
DENISE.BUFFINGTON@EVERGY.COM

ANTHONY WESTENKIRCHNER, SENIOR PARALEGAL
EVERGY METRO, INC D/B/A EVERGY KANSAS METRO
One Kansas City Place
1200 Main St., 19th Floor
Kansas City, MO 64105
anthony.westenkirchner@evergy.com

LISA AGRIMONTI, ATTORNEY
FREDRIKSON & BYRON
200 S 6TH
MINNEAPOLIS, MN 55402
LAGRIMONTI@FREDLAW.COM

TERRY M. JARRETT, Attorney at Law
HEALY LAW OFFICES, LLC
3010 E BATTLEFIELD
SUITE A
SPRINGFIELD, MO 65804
terry@healylawoffices.com

HEATHER H STARNES, ATTORNEY
HEALY LAW OFFICES, LLC
12 Perdido Circle
Little Rock, AR 72211
heather@healylawoffices.com

JAMES W. BIXBY, ATTORNEY - REGULATORY & LEGISLATIVE

ITC GREAT PLAINS, LLC
601 THIRTEENTH STREET NW
STE 710S
WASHINGTON, DC 20010
jbixby@itctransco.com

PATRICK WOODS, Manager of Regulatory Strategy
ITC GREAT PLAINS, LLC
3500 SW FAIRLAWN RD STE 101
TOPEKA, KS 66614-3979
cwoods@itctransco.com

DAVID COHEN, ASSISTANT GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.cohen@kcc.ks.gov

BRIAN G. FEDOTIN, GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
b.fedotin@kcc.ks.gov

JARED JEVONS, LITIGATION ATTORNEY
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.jevons@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

SUSAN B. CUNNINGHAM, SVP, Regulatory and Government Affairs, General
Counsel
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
scunningham@kepco.org

MARK DOLJAC, DIR RATES AND REGULATION
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
mdoljac@kepco.org

REBECCA FOWLER, MANAGER, REGULATORY AFFAIRS
KANSAS ELECTRIC POWER CO-OP, INC.
600 SW CORPORATE VIEW
PO BOX 4877
TOPEKA, KS 66604-0877
rfowler@kepco.org

LESLIE WINES, ADMINISTRATIVE ASST.
KCP&L AND WESTAR, EVERGY COMPANIES
818 S KANSAS AVE
PO BOX 889
TOPEKA, KS 66601-0889
Leslie.Wines@evergy.com

GLENDA CAFER, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
GCAFER@MORRISLAING.COM

TREVOR WOHLFORD, ATTORNEY
MORRIS LAING EVANS BROCK & KENNEDY
800 SW JACKSON
SUITE 1310
TOPEKA, KS 66612-1216
twohlford@morrislaing.com

WILLIAM P. COX, Senior Attorney
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
will.p.cox@nexteraenergy.com

TRACY C DAVIS, SENIOR ATTORNEY
NEXTERA ENERGY TRANSMISSION, LLC
5920 W WILLIAM CANNON DR, BLDG 2

AUSTIN, TX 78749
TracyC.Davis@nexteraenergy.com

MARCOS MORA, Executive Director, Development
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
marcos.mora@nexteraenergy.com

BECKY WALDING, Executive Director, Development
NEXTERA ENERGY TRANSMISSION, LLC
700 Universe Blvd
Juno Beach , FL 33408
becky.walding@nexteraenergy.com

ANNE E. CALLENBACH, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
acallenbach@polsinelli.com

ANDREW O. SCHULTE, ATTORNEY
POLSINELLI PC
900 W 48TH PLACE STE 900
KANSAS CITY, MO 64112
aschulte@polsinelli.com

LEE M. SMITHYMAN, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
LEE@SMIZAK-LAW.COM

CONNOR A. THOMPSON
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
connor@smizak-law.com

JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W. 110th St.
OVERLAND PARK, KS 66210-2362
jim@smizak-law.com

JUSTIN A. HINTON, Attorney
SOUTHWEST POWER POOL, INC.
201 WORTHEN DR
LITTLE ROCK, AR 72223
jhinton@spp.org

TESSIE KENTNER, ATTORNEY
SOUTHWEST POWER POOL, INC.
201 WORTHEN DR
LITTLE ROCK, AR 72223
tkentner@spp.org

TAYLOR P. CALCARA, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
TCALCARA@WCRF.COM

JEFFREY M KUHLMAN, ATTORNEY
WATKINS CALCARA CHTD.
1321 MAIN ST STE 300
PO DRAWER 1110
GREAT BEND, KS 67530
jkuhlman@wcrf.com

/s/ Rustin J. Kimmell